

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 4, 8, 12, 16, 20, 24, 28, 32, 36, 39, 40, 41, and 45 are currently pending. In the outstanding Office Action, Claims 1-47 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-10 of Omura et al. (U.S. Patent No.6,750,508, herein "Omura").

First, Applicant wishes to thank the Examiner for the courtesy of a telephone interview granted to Applicant's representative on March 30, 2005, at which time the outstanding issues in this case were discussed. Specifically, Applicant's representative mentioned that a preliminary amendment was filed as part of the originally filed application, as shown on the date-stamped filing receipt of February 3, 2004, which preliminary amendment amended the specification to claim the benefit of the earlier filing date of U.S. Application Serial No. 09/892,545 (now U.S. Patent No. 6,750,508, "Omura") and canceled Claims 1-3, 5-7, 9-11, 13-15, 17-19, 21-23, 25-27, 29-31, 33-35, 37, 38, 42-44, 46, and 47. Applicant's representative thus inquired about the double-patenting rejection of Claims **1-47** which does not appear proper since it encompasses previously canceled claims and is based on Omura which cannot be used as a reference against this divisional application since it was issued from the parent application after restriction of claims as directed to patentably distinct inventions was made. The Examiner mentioned that he may have been transmitted only the cover page of the preliminary amendment and suggested that a formal response be submitted stating all the facts along with a copy of the preliminary amendment.

Therefore, Applicant respectfully submits the attached date-stamped filing receipt and copy of the preliminary amendment filed on February 3, 2004, and requests that the

preliminary amendment be fully entered in the record and a new Office Action be issued accordingly.

Further, in response to the rejection of Claims 1-47, considered as directed only to Claims 4, 8, 12, 16, 20, 24, 28, 32, 36, 39, 40, 41, and 45, Applicant respectfully submits that the Omura patent cannot be used as a reference against this divisional application since Omura was issued for the parent application with respect to which a requirement for restriction has been made.<sup>1</sup> Specifically, Figures 1, 18, 19, 20, 21, 22, 24, 25, 28, 38, 39, 40, 41, 42, 43 were deemed during prosecution of the parent application to be patentably distinct species in the Office Action of July 31, 2002, wherein Figure 1 and Claims 2, 6, 10, 14, 18, 22, 26, 30, 34, and 43 were elected. However, Claims 4, 8, 12, 16, 20, 24, 28, 32, 36, 39, 40, 41, and 45, the only claims not canceled in this divisional application, pertain to Figure 28.

Consequently, in view of the above discussion, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 4, 8, 12, 16, 20, 24, 28, 32, 36, 39, 40, 41, and 45 is earnestly solicited.

---

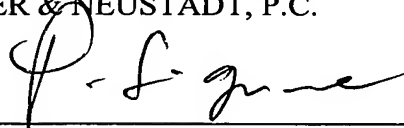
<sup>1</sup> See 35 U.S.C. § 121.

Application No. 10/770,014  
Reply to Office Action of February 25, 2005

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



---

Eckhard H. Kuesters  
Attorney of Record  
Registration No. 28,870

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)

Philippe J. C. Signore  
Registration No. 43,922

I:\ATTY\CDA\240-249\248354\248354US-A.doc